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November 16, 2007

Honorable Theodore H. Katz
United States District Courthouse
500 Pearl Street, Room 1660
New York, New York 10007-1312

Re: Wausau Underwriters, et al.
vs. QBE Insurance Corp., et al.
Docket # 06 CIV 3212 (VM) THK)

Dear Magistrate Judge Katz:

The undersigned is the attorney for QBE in this matter. Please allow this correspondence to update the Court on the status of the case since the conference of October 16, 2007. QBE has withdrawn its Notice of Appeal without prejudice to re-file upon a final judgment.

However, the parties have a disagreement as to the effect of Judge Marrero's decision of July 26, 2007. It is QBE's position that the only issue the Court decided was that QBE is required to defend New York City Economic Development Corporation and Barney Skanska Construction Company.

The Court did not address or decide whether any of the other insurance carriers also owe a duty to defend these entities. The contracts of Owen Steel (Wausau), McNulty (Axis) and Arena Construction Co. (Scottsdale) all require that the insurance purchased for the additional insureds be primary. The Wausau policy states that its coverage is primary if required by a written contract. The Scottsdale policy also states that its coverage is primary under a certain condition.

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Judge Marrero specifically recognizes these undecided issues in footnotes 4 and 6 of the decision. It is QBE's contention that under the rational of the BP Air case, all of the insurance carriers that named NYCEDC and Skanska as additional insureds owe a defense on a co-insurance basis with QBE.

It is respectfully submitted that the Court permit QBE to bring these issues before the Court by way of a motion to determine whether some or all of the other insurance carriers owe a duty to defend NYCEDC and Skanska.

Respectfully yours,

WILSON, BAVE, CONBOY, COZZA &
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